IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

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WRIT PETITION NO.7553 of 1995

Between:

1 Kakuturi Krishna Reddy, S/o Veera Reddy
R/o.Punjulurupadu (V), Venkatachalam (Mandal)
Nellore Dist.
2 Kakuturi Ramanamma, W/o Krishna Reddy
R/o.Punjulurupadu (V) Venkatachalam (Mandal)
Nellore Dist.

..... PETITIONERS

AND

1. The Special Tahsildar, Land Acquisition, Nakkalakalava Drainage

Scheme, Dist.Collectorate Compound, Achari Street,
Nellore, Nellore District.

....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate order, writ or direction especially one in the nature of Writ of Mandamus declaring the orders issued by the Respondent in his Rc.No.148/93 dated 22-10-1994 as illegal and arbitrary and set aside the same and consequently direct the respondents to refer the matter under Section 18 of the Land Acquisition Act to the competent court in pursuance of the Award bearing No.5 DR/93-94 dated 15-2-1994.

Counsel for the Petitioners: MR.V.S.R.MURTHY

Counsel for the Respondent: GP FOR LAND ACQUISITION

The Court made the following :

ORDER:

By this writ petition, the petitioners, in effect, seek a direction to the respondent to make a reference under Section 18 of the Land Acquisition Act in respect of their land acquired under Award bearing No.5 DR/93/94, dated 15.02.1994.

The petitioners state that the Government of Andhra Pradesh acquired their land to an extent of Ac.4-58 cents comprising Ac.2-56 cents in survey No.120/1 and Ac.2-02 cents in survey No.123/2 of Punjulurupadu village, Venkatachalam Mandal of Nellore District for the purpose of widening and deepening of Nakkalakalava drainage. They state that they formed fishponds in the land by spending the loan amount of Rs.78,630/- sanctioned by Niduguntapalem Co-operative Society during the year 1991-92 and also their own money of Rs.1 lakh. Though compensation was paid towards land value and the loan amount, no compensation has been paid for fishponds. Thereupon, the petitioners made applications dated 27-4-1994 and 12-9-1994 to the respondent requesting for reference under Section 18 of the Land Acquisition Act, but the respondent refused their request by reply dated 22-10-1994 on the ground of consent Award. Hence, the writ petition.

A counter-affidavit is filed on behalf of the respondent denying the allegations made in the affidavit filed in support of the writ petition. It is stated that as per the request of the petitioners only, the loan amount of Rs.90,777/- was paid. It is also stated that a notice under section 12 (2) of the Land Acquisition Act, was served on the petitioners on 7-3-94 and by the date of taking possession of land, the fishponds in question were not in existence and petitioners never claimed compensation for fishponds prior to 15-3-1994. It is also stated that the award was passed with the consent of parties and the amount was paid as a package deal, which includes market value, additional market value, tree value, structure value, solatium and interest. As such, the petitioners are not entitled to seek reference under section 18

of the Land Acquisition Act. It is also stated that the petitioners while receiving award amount had not made any protest. Thus, the respondent prays to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition.

It is contended by the petitioners that by the time of taking possession of their land under the Award in question, there were fishponds, and no amount of compensation was granted in respect thereof while awarding compensation, and therefore, they seek reference under Section 18 of the Land Acquisition Act. The said contention was denied by the respondent by stating that no fishponds were in existence in the land of the petitioners by the time of taking possession thereof, and the Award was passed with the consent of the parties, and therefore no reference is required under the provisions of Land Acquisition Act. Whether there existed fishponds at the time of taking over possession of the land or not, and if existed what was the compensation that was to be paid, are all disputed questions of fact, which cannot be gone into by this Court in a proceeding under Article 226 of the Constitution of Act. The remedy of the petitioner, if any, is to approach the competent civil court and file a civil suit.

Accordingly, the writ petition is dismissed. However, this order does not preclude the petitioners to take appropriate remedy available to them under law to file a civil suit for appropriate compensation, if they are so advised. No costs.

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(N.V. RAMANA, J)

Date: 09.08.2004

Nsr/Tvk

To

1. The Special Tahsildar, Land Acquisition, Nakkalakalava Drainage

Scheme, Dist.Collectorate Compound, Achari Street,
Nellore, Nellore District.

2. Two CCs to G.P for Land Acquisition, High Court of A.P., Hyderabad

(OUT)

3. Two CD copies.